The power under which X acted has always been regarded as non-exclusive in Kentucky. This seems to be established by *McGaughey's Adm'r* v. *Henry,* 15 B. Mon. 383; *Degman* v. *Degman,* 98 Ky. 717, 34 S. W. 523; *Clay* v. *Smallwood,* 100 Ky. 212, 38 S. W. 7; and *Levi* v. *Fidelity Trust Co.,* 121 Ky. 82, 88 S. W. 1083. These cases also refer by dictum to the illusory appointment doctrine as the settled rule and the equitable doctrine, but since the rule was in no wise involved in the cases, the court in the principal case does not profess to rely upon them. The court declares "the doctrine is founded upon the principle that where a donor of a power of appointment has confided to the donee thereof a non-exclusive power to dispose of the estate to the members of a particular class, the donee must fairly and reasonably execute the power." On the other hand, there are many cases which have held the opposite view, some on the ground that such a power is exclusive, and others on the ground that equity has no right to interfere with the exercise of the discretion of the donee as to the amounts to be assigned to each member, so long as each is given some share. In *McCamant* v. *Nuckols,* 85 Va. 331, the court held that any share, however small, was enough; this holding is supported by *Rhett* v. *Mason,* 18 Gratt, 44, and *Morris' Ex'rs* v. *Morris,* 33 Gratt. 51. In *Hatchett* v. *Hatchett,* 103 Ala. 556, the court says that the doctrine has no standing in that court, citing with approval the English cases of *Spencer* v. *Spencer,* 5 Ves. Jr. 362; *Butcher* v. *Butcher,* 9 Ves. 382; *Morgan* v. *Surman,* 1 Taunt. 289; and *Bax* v. *Whitbread,* 16 Ves. 15, all of which disapprove of the illusory doctrine. In *Graeff* v. *DeTurk,* 44 Pa. St. 527, the court absolutely refuses to recognize any such doctrine as existing in that state. Illinois has declared that all powers to appoint to a class should be regarded as exclusive and that the appointment of any amount to a member of the class will be sufficient. *Hawthorne* v. *Ulrich,* 207 Ill. 430, 69 N. E. 885. The following states have passed statutes making all powers exclusive: Alabama, Michigan, Minnesota, New York, Wisconsin, North Dakota, South Dakota, Oklahoma; and England has a statute (1 Wm. 4, c. 46) which declares that no appointment shall be void by reason of the amount given to any of the class. It seems strange that a doctrine so old as this one, which has been thoroughly tried out by the courts of several jurisdictions and found to be useless as a practical working basis, should be adopted by the Kentucky court. What would be a substantial share under an appointment in Kentucky must of necessity be a matter of guess-work in each case until the court has ruled upon that case. The legislature may find it necessary to adjust the matter, as has been done in England and so many of the states.

SALES—CONSTITUTIONALITY OF BULK SALES ACT.—The Supreme Court of Ohio, reversing the decision of the trial court, held the Ohio Bulk Sales Act to be constitutional. *Steele, Hopkins & Meredith Co.* v. *Miller* (1915), 110 N. E. 648.

This court seems to have abandoned the position that it took in *Miller* v. *Crawford,* 80 Oh. St. 207, and *Williams-Thomas Co.* v. *Preslo,* 84 Oh. St. 328, which seems to have been the only dissent from the great array of

authority upholding the Bulk Sales Act. The court in the principal case admitted that under the holdings of their previous decisions the Act in question would be unconstitutional, as placing an unwarranted restriction upon the right of the individual to acquire and possess personalty and as discriminatory in violation of the first article of the state constitution. The court based its decision on the recent amendment to Article 13 of the constitution. This amendment was to the effect that laws regulating the sale and conveyance of personal property might be passed. The court referred to the fact that the convention had these previous decisions of theirs in mind when drafting the amendment, and that the purpose it evidently intended to accomplish was to unfetter the legislature by meeting the conditions declared by these cases to exist. The court held that the amendment was not merely declarative of powers which the legislature already had, but amended Article 1 in such a way as to admit of bulk sales legislation that formerly would have been unconstitutional. The court evidently took this amendment as a criticism of the Ohio position, and gave it effect by changing the constitution by implication, thereby placing the state in line with the general trend of modern decisions. For an extensive discussion of this subject, see L. R. A. 1915E, 917-922.

SALE—RESCISSION OF EXECUTED CONTRACT FOR BREACH OF WARRANTY.—Plaintiff sold defendant a horn guaranteed to be perfect in tone and workmanship. Defendant claimed the horn was not correct in tone owing to a defective valve, and refused to pay the balance due, but kept the horn. *Held,* plaintiff could recover the actual value of the horn. But the court said that the defendant could have, within a reasonable time after discovering the defect, returned the horn and sued for the amount paid down. *Jenkin's Sons Music Co.* v. *Kindle* (Mo. App. 1915), 180 S. W. 557.

Defendant sold plaintiff certain tiling, hoops, frames, etc., for a silo, to be constructed by plaintiff, which was guaranteed not to bulge or crack. It was properly constructed, and soon after it was filled cracked up to a height of fifteen feet. Plaintiff tendered the silo to the defendant and sued to recover the notes that he had given in payment. *Held,* that in the absence of fraud or an agreement, the plaintiff could not rescind. *Texas-Kalamazoo Silo Co.* v. *Alley* (Tex. Civ. App. 1915), 180 S. W. 621.

The rule of the Missouri case is what is known as the Massachusetts rule, established by the cases of *Bradford* v. *Manly,* 13 Mass. 139, and *Perley* v. *Balch,* 23 Pick. 283, and allows rescission for breach of warranty in an executed contract of sale; the Texas case seems to follow the so-called English rule, established by *Street* v. *Blay,* 2 B. & Ad. 456, and *Dawson* v. *Collis,* 10 C. B. 523, which allows a rescission only on breach of condition. Under the Massachusetts rule it is immaterial whether the breach amounts to a failure of a condition precedent or only to a breach of warranty, but under the English rule it is very material whether the breach amounts to a failure of a condition precedent or not, and had the Texas court looked to see whether it amounted to such the result might have been different. For an extensive review of the authorities on this subject, see the note to *Gay Oil Co.* v. *Roach* (Ark.), 27 L. R. A. (N. S.) 914, and 35 CYC. 434.